



STAFF REPORT

Regular Agenda

To: Hebgen Lake Planning and Zoning Commission

From: Amy Waring, Code Compliance Specialist

Subject: Determination whether the uses associated with War Wagon Services are accessory uses as permitted in the RX (Existing Residential) Zoning District or commercial uses.

Hearing Date: April 19, 2007

Location: Holiday Inn, West Yellowstone, MT

BACKGROUND

Bill and Gail Arnado reside at 170 Mountain View Drive in West Yellowstone, MT (zoned Existing Residential-RX). Mr. Arnado operates War Wagon Services, which includes snowplowing, excavation, and a tree nursery / tree planting business. Mr. Arnado stores equipment and vehicles on his property, allows employees to park on site, and in general uses the property as a staging area for work that is conducted off site. It is unclear what specific duties, and to what extent Mr. Arnado's employees are performing on site.

I received two complaints in 2006 that Mr. Arnado is operating a commercial business from his home in violation of the Hebgen Lake Zoning Regulation. On July 18, 2006, I determined that Mr. Arnado does not have a legitimate home occupation because his businesses do not meet the criteria for a home occupation.

I reviewed the facts of the case and the Hebgen Lake Zoning Regulation in an attempt to determine if Mr. Arnado is operating a commercial use, which is not allowed, or an accessory use, which is a permitted use in the RX District. Due to competing interpretations of the Zoning Regulation, I deferred this decision to the Hebgen Lake Planning and Zoning Commission.

The purpose of today's hearing is to interpret the Hebgen Lake Zoning Regulation, and decide whether War Wagon Services at 170 Mountain View Drive as an accessory use or strictly a commercial use.

STAFF FINDINGS

1. The Hebgen Lake Zoning Regulation was adopted on November 13, 1975 and amended thereafter.

2. **Section 5.5** allows the Planning and Zoning Commission to make official interpretations of the Hebgen Lake Zoning Regulation.
3. **Section 6.1** defines an Accessory Use or Building as, “A building or use which: 1) is subordinate in area, extent or purpose to the principal use served; or 2) contributes to the comfort, convenience, or is a necessity for the occupants of the principal building or principal use. Some potentially problematic accessory uses and buildings are specifically addressed here.
 1. One single-family dwelling unit, detached or attached, occupied by the owner, a manager, or a guard shall be a customary accessory use for all commercial uses in the Commercial zone.
 2. Home occupations shall be customary accessory uses.
 3. Guesthouses or cabins shall not be customary accessory uses.”
4. **Section 6.15** defines Commercial as, “A use which involves the exchange of goods and services, for compensation, whether by money, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over a period of time. Specifically includes any use specifically listed as permitted, or permitted upon approval of a conditional use permit, in the C district or the PUD-X district.”
5. **Section 6.37** defines Home Occupation as, “A home occupation is a commercial activity conducted in a home or an accessory building, by the resident family, in compliance with this Regulation.”
6. **Section 16.10** defines development standards for a Home Occupation. They include:
 - a. All home occupations shall be conducted entirely within the dwelling or an accessory building.
 - b. No home occupation shall occupy more than 20 percent of the gross floor area of the structures on the lot, not to exceed 400 square feet.
 - c. Home occupations shall have no on-site employees other than members of the resident’s family.
 - d. Home occupations shall not alter or detract from the residential character of the premises on which they are conducted.
 - e. Home occupations shall not solicit or attract walk-in customers.
7. Mr. Arnado’s property at 170 Mountain View Drive is located in the Existing Residential District (RX) of the Hebgen Lake Zoning District.
8. Pursuant to Section 7.2 of the Hebgen Lake Zoning Regulation, permitted uses in the RX District include one single family dwelling per existing lot, accessory uses, and home occupations.

9. The legal description of Mr. Arnado's property is Lot 30 of the Horse Butte Acres Subdivision located in the northeast quarter of Section 25, Township 12 South, Range 4 East. The lot is 5.0 acres in size.
10. According to information provided on the State of Montana's web site (<http://gis.mt.gov/>), the residence at 170 Mountain View Drive was built in 1996.
11. According to Gallatin County tax information, Mr. Arnado began paying taxes on the property in 2000.
12. On March 6, 2006 and June 10, 2006, I received complaints from the Hebgen Lake Advisory Committee and Mr. Tom Hall respectively, that Mr. Arnado is running a commercial business from his property at 170 Mountain View Drive, and that this use violates the Hebgen Lake Zoning Regulation. Specifically, the complainants allege:
 - a. Mr. Arnado allegedly operates a home business that is not compliant with the Hebgen Lake Zoning Regulation.
 - b. Capital investments and equipment are stored at the home, including large dump trucks, flat bed trucks and trailers, backhoe, snow blowing equipment, above ground fuel tanks, large piles of rock, topsoil, and fence material. Back-up beepers allegedly begin as early as 7 am and go until dark.
 - c. Mr. Arnado hires employees to work for him on-site. Employees allegedly pick up and return equipment from the property, and work on the premises. Employees allegedly operate bobcat loaders and other equipment from the site.
 - d. Customers allegedly come to the property to select trees. The caring for and moving of trees with heavy equipment at the tree farm allegedly violates the zoning regulation.
 - e. Mr. Arnado allegedly brings back fencing materials from customers' property and burns it on site.
 - f. Mr. Arnado allegedly burns trash from a restaurant business, including plastic plates, cups, and food scraps. This is a grizzly bear attractant and health hazard.
 - g. The items listed above detract from the character of the residential neighborhood.
13. I inspected the site from public roads on April 20, 2006 and June 21, 2006, and took pictures of my observations (**Exhibit 1**). I noted the presence of equipment and vehicles stored behind Mr. Arnado's house, and small trees planted in rows.
14. On June 21, 2006, I met with Mr. Arnado on site, explained the nature of the complaint, and asked for information. Mr. Arnado verbally provided the following information:
 - a. He operates three businesses, collectively called War Wagon Services. The businesses include an excavation business, snow removal business, and tree nursery / tree planting business. With the exception of the trees planted on site and equipment storage, Mr. Arnado conducts all work off site.
 - b. Three summertime employees park onsite, but do not work onsite. Mr. and Mrs. Arnado do the snowplowing themselves, and do not have any winter employees.
 - c. No customers come to the property.

- d. Two plow trucks, three personal vehicles, various equipment, and a fuel tank is stored behind the house.
- e. Mr. Arnado informed me that he has a valid burn permit from the MT Department of Environmental Quality. (DEQ recently informed me that Mr. Arnado does not have a burn permit.)

15. On July 18, 2006, I determined that Mr. Arnado does not have a legitimate home occupation because his businesses do not meet the criteria for a home occupation. Mr. Arnado's work is conducted off site, not within the dwelling or an accessory building. The Hebgen Lake home occupation standards do not address outdoor storage. He has employees that park on site, but work offsite. Although Mr. Arnado's businesses do not solicit walk-in customers, they may detract from the residential character of the neighborhood.

I asked Mr. Arnado to provide documentation that will substantiate whether his onsite storage and parking constitutes a commercial use or an accessory use of his property. In order to document an accessory use, Mr. Arnado had to prove that his use is subordinate in area, extent or purpose to the principal use served (i.e. single family dwelling) and/or contributes to his comfort, convenience, or is a necessity for his principal use as a residence (definition of Accessory Use as defined in Section 6.1).

16. On December 12, 2006, I sent Mr. Arnado another letter, affirming my July 18, 2006 decision that he does not have a legitimate home occupation, and reiterated my request for information.
17. On December 19, 2006, Mr. Arnado responded as follows:
- a. He has a medical condition that prevented him from putting snowplows on his vehicles as he has done in the past. Therefore, an employee assisted with the snow plows.
 - b. The soil piled on his property was for personal use.
 - c. The burning of fence and yard materials on his property was done as a favor for his church.
 - d. Employees park at the rear of his property. The other option would be for them to park on the road.
 - e. He feels that he is not operating a commercial business from his property, and that members of the Advisory Committee that are abusing their position. He refused to plow snow for one person and has been on their "hit" list.
18. There are two possible interpretations of the Hebgen Lake Zoning Regulation with regards to this complaint, as discussed below.
19. Complainants argue that the maintenance of Mr. Arnado's equipment and inventory storage at 170 Mountain View Drive constitute a commercial use of his property because these uses are an integral part of running his business. Employees come to his property to maintain his equipment and to load his inventory. Complainants allege that he is operating a commercial operation in a residential district, unless he has an alternate, primary location for his business in a commercial district. Or, alternatively, Mr. Arnado is running a home occupation in violation of Section 16.10.

Complainants further allege that an accessory use may not stand alone, and must apply to a building or principal use, i.e. a residence. Complainants allege that the accessory *use must also be subordinate* in purpose to the principal building or use served.

Complainants argue that Mr. Arnado can use his capital equipment and inventory at his home in order to conduct business, and to enhance his dwelling and make his work more convenient, ONLY if he complies with the standards for a home occupation.

Complainants propose the following remedies:

- a. Mr. Arnado may contain his inventory and equipment in an accessory building as large as 1200 square feet (with approval of a Land Use Permit). Section 16.10(b) states that no home occupation shall occupy more than 20 percent of the gross floor area of the structures on the lot, not to exceed 400 square feet. However, complainants maintain that Mr. Arnado would be allowed an accessory building up to 1200 square feet because he would be using it for the convenience and necessity of his principal use of his home. (According to Section 16.6, accessory buildings over 1200 square feet require a CUP.)
- b. Complainants believe that Mr. Arnado's snowplow business, with employee assistance, may qualify for an accessory use because of Mr. Arnado's health. However, if not, Mr. Arnado could apply for a variance to allow his employees to assist him with his blade and truck.
- c. Regarding the landscaping business, complainants argue that Mr. Arnado needs to show his product or inventory to his customers at a place other than his residence. This could be done with computers at the homes of his customers instead of his own home.

20. Mr. Arnado believes that he has valid accessory uses because they contribute to his comfort and convenience, and are a necessity for him to reside in West Yellowstone. Mr. Arnado believes that the uses on his property are not commercial because all work is conducted off site, and customers to not come to his property.

Mr. Arnado verbally informed me that he has an alternate site in West Yellowstone that he uses during the summer for his businesses. He does not own the property, which is located near the Exxon Station on Canyon Street (and is currently for sale). There is a War Wagon Services sign posted. Mr. Arnado indicated that he parks vehicles at this alternate site in the summer, as 90% of his work is in town. Mr. Arnado stated that he does not use this site in the winter.

Chris Scott, County Planner, inspected Mr. Arnado's alternate location on March 14, 2007. He observed two tow trucks, a Darigold truck, and a War Wagon sign. The sign advertises excavation, dump trucks, backhoe, bobcat, top soil, and landscaping (**Exhibit 2**). Mr. Arnado says he only uses the site in the summer, so Mr. Scott's observations may not reflect summer use.

Mr. Arnado claims he has a health condition, and must rely on help from his employees to put the snow plows on his trucks at 170 Mountain View Way. He stated that his employees contribute to his comfort and convenience, and are a necessity to him.

From a practical perspective, it may not be feasible for Mr. Arnado to park his snowplows in a commercial district elsewhere in West Yellowstone. The roads he plows are located in the immediate vicinity of his residence, and it may not be practical, much less feasible to drive a long distance down Rainbow Point Road and US Hwy 191 under winter conditions to bring the snowplows back to the area to plow. (Mr. Arnado has a contract with Gallatin County to plow Hebgen Lake Estates.)

Mr. Arnado states that he does not have customers come to his property to select trees for his landscaping business. He further states that his employees park on site, and work off site (including an adjacent neighbor's property that they walk to.) Mr. Arnado states that the dirt stored on his property and burning of fence and yard material were personal uses, not commercial uses.

21. In No. 19, complainants allege an accessory *use must also be subordinate* in purpose to the principal building or use served. However, pursuant to Section 6.1, the definition of Accessory Use states, "A building or use which: 1) is subordinate in area, extent or purpose to the principal use served; *or* 2) contributes to the comfort, convenience, or is a necessity for the occupants of the principal building or principal use.

Because disposition of the issues involved in this Interpretation of Use consider various provisions of the Hebgen Lake Zoning Regulation, the Hebgen Lake Planning and Zoning Commission must follow the standard rules for statutory construction. When construing zoning regulations, the Commission must simply ascertain and declare what is in substance stated therein, and not to insert what has been omitted or to omit what has been inserted. The fundamental rule of construing zoning regulations adopted pursuant to Title 76, Chpt. 2, Part 1, is that the intent of the Hebgen Lake Zoning Regulation controls. Where the intent of the Regulation can be determined from the plain meaning of the words used, the Commission may not go further and apply any other means of interpretation.

Thus, the Commission must place emphasis on the word "Or" in considering the definition of Accessory Use.

22. The burning aspect of this complaint is outside the scope of zoning, as the Hebgen Lake Zoning Regulation does not regulate burning. The Department of Environmental Quality regulates burning, and they are currently responding to a separate complaint filed with their agency.
23. Additional written public comment was received from Janice Carsley (6/20/06 letter received 2/26/07), Dee Rothschiller Hall (2/5/07), and David Klatt (3/8/07). Information presented in these letters include:
 - a. Ms. Carsley's letter includes complaints regarding Mr. Arnado's business, including: snow plowing, excavation, tree farm and landscaping business. "Mr. Arnado employs at

least two people who come to the home/business Monday through Friday and work on the premises, or go to other job sites. The business is noisy, unsightly and in obvious violation of zoning laws.” The letter also includes a complaint about the burning, which is not regulated by zoning, and is being investigated by the MT Department of Environmental Quality. **(Exhibit 3)**

- b. Ms. Hall’s letter reiterates Ms. Carsley’s complaints, and also states that Mr. Arnado was aware that commercial businesses were not allowed in the Horse Butte Subdivision when he built his home in 1996. She further states that War Wagon started business with just plowing snow, but every year adds another segment to the operation. Mr. Arnado stores a lot of equipment and vehicles on his property that is in direct view of all the neighbors on Pine Needle Road. He does have a sign advertising his business in West Yellowstone on Canyon Street, and one of his trucks may be seen there on occasion.

Ms. Hall states, “The men that are employed by War Wagon drive their vehicles to the Arnado residence and pick up their work order for the day driving the equipment and loading materials for the job. This is clearly a commercial business operating out of a residential subdivision...War Wagon exchanges services for compensation and has made a huge negative impact on this otherwise quiet and tidy subdivision.” **(Exhibit 4)**

- c. Mr. Klatt states that if the use involves the exchange of services for compensation, then the use is not allowed in a residential district. He also states that Mr. Arnado’s use cannot be considered a home business, because it is not in the home and is more than 400 square feet. Home occupations can also not detract from the residential character of the neighborhood. Accessory uses are permitted in the RX district, but not commercial uses. Accessory uses cannot be a business. **(Exhibit 5)**

- 24. Mr. Arnado also submitted a letter on March 8, 2007 alleging violations of open meeting laws, and asked that the Commission receive a copy of his letter. His letter, and my response (March 29, 2007) are included as **Exhibit 6**.

STAFF SUGGESTED ACTION:

After hearing and considering all public testimony, the Hebgen Lake Planning and Zoning Commission must interpret the Hebgen Lake Zoning Regulation, and decide whether War Wagon Services at 170 Mountain View Drive is an accessory use, or strictly a commercial use. The Commission should consider each of the three components of War Wagon Services separately, and make findings for:

- a. The snowplowing business, including onsite parking of snowplow vehicles, onsite assistance from employees, and off site snowplowing.
- b. The excavation business, including onsite storage of materials and equipment, onsite parking of employee vehicles, and use of the property as a staging area for work that is conducted off site.

- c. The tree nursery business, including the growing of trees on site without customers coming to the property.

For each of the three components of War Wagon Services listed above, the Planning and Zoning Commission must follow the standard rules for statutory construction to determine the following:

- a. Whether the snowblowing component of War Wagon Services as described above meets the definition of accessory use or is strictly a commercial use?
- b. Whether the excavation component of War Wagon Services as described above meets the definition of accessory use or is strictly a commercial use?
- c. Whether the tree nursery/tree planting component of War Wagon Services as described above meets the definition of accessory use or is strictly a commercial use?